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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/473,194	12/06/1999	WAYNE M. SLAGLE		9698

7590 10/09/2003
Schwabe, Williamson & Wyatt
1211 S.W. 5th
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Portland, OR 97204

EXAMINER

CHIN, PAUL T

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 10/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.		Applicant(s)	
	09/473,194		SLAGLE, WAYNE M.	
	Examiner		Art Unit	
	PAUL T. CHIN		3652	

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4, 6-10 and 12-15 is/are rejected.
- 7) ☒ Claim(s) 5 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 24 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3652 ✓

DETAILED ACTION

1. The reconsideration filed July 15, 2003, and the arguments therewith, have been carefully considered. Regarding claims 5 and 11, they are deemed to be fully persuasive. Therefore, claims 5 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, regarding claims 4,6-10, and 12-15, they are not persuasive. A final office action follows as below.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4,7-10, and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gregory [536,927] in view of SOMFY's Catalog, provided by the applicant.

Art Unit: 3652

Gregory [536,927] discloses an elevator apparatus comprising a tower assembly having a vertical track (10,10); an elevator or a container (6), which is a one piece construction, slidably received on the tower (see Fig. 1); a pulley system having a plurality of upper sheaves (4,4); a pair of lifting cables (5,5); a plurality of lower sheaves or drums (9,9) (see Fig. 2); and a gear assembly wherein the lower sheaves fixedly mounted to a rotatable cylindrical shaft (8,13) to thereby wind and unwind the lifting cables to selectively raise and lower the elevator. Re claim 10, Gregory further shows a pulley system (2) mounted above the tower upper end, the pulley system having two-spaced apart pulleys (4,4) in substantially vertical alignment with the two-spaced apart shaves. Gregory [536,927] does not show *the rotatable cylindrical shaft encasing a drive motor and engaged by the drive motor* for rotation of the shaft.

However, SOMFY's Catalog shows *a rotational shaft or tube (see page 27) enclosing a HIPRo LT50 motor* to provide power to wind and unwind the provided cables. It would have been an obvious to one of the ordinary skill in the art at the time the invention was made to provide HIPRo LT50 motor on the Gregory's apparatus [536,927] as taught by SOMFY's Catalog to thereby wind and unwind the lifting cables to selectively raise and lower the elevator.

Re claims 8 and 14, the modified Gregory's elevator system [536,927] shows a guide bar (7) (see Fig. 3) adjacent to and parallel with the cylindrical shaft and it appears that the guide bar would be capable of guiding the two cables (5,5) on and off the sheaves (9,9) in a preferred directions.

Re claims 9 and 15, the modified Gregory's elevator system [536,927] shows a cage or container being made of one-piece construction and the functional limitation (i.e. adapted to contain a fluid spill) is not patentably significant.

Art Unit: 3652

5. Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Gregory [536,927]** in view of **SOMFY's Catalog**, as applied to claims 5 and 10 above, and further in view of Johnson (3,845,842) (see Paper No. 4).

Gregory [536,927] in view of SOMFY's Catalog, as presented in section 4 above, contains all the structural elements except having *a buckle* to adjust the length of a cable. However, Johnson (3,845,842) shows *a buckle* (26,29) (see Fig. 5) to adjust the length of a cable (25,25). Accordingly, it would have been an obvious to one of the ordinary skill in the art at the time the invention was made to provide *a turnbuckle* on each cable (5,5) of the modified Gregory's elevator system [536,927] as taught by Johnson (3,845,842) to adjust the length of each cable.

Allowable Subject Matter

6. Claims 5 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. The reconsideration filed July 15, 2003, and the arguments therewith, have been carefully considered. Regarding claims 5 and 11, they are deemed to be fully persuasive. Claims 5 and 11, therefore, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, regarding claims 4,6-10, and 12-15, they are not persuasive.

Art Unit: 3652

In response to applicant's argument based upon the age of the references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is pointed out that it would have been an obvious to provide a rotational tube (see pate 27 of SOMFY Catalog) enclosing a motor on the Gregory's apparatus [536,927] as taught by SOMFY's Catalog to thereby wind and unwind the lifting cables to selectively raise and lower the elevator.

Re claims 6 and 12, the applicant argues to provide a reference to support assertion of a well-known "turnbuckle." Johnson (3,845,842), as presented in section 5 above, shows *a buckle* (26,29) (see Fig. 5 of Paper No. 4) to adjust the length of a cable (25,25). Accordingly, it would have been an obvious to one of the ordinary skill in the art at the time the invention was made to provide *a turnbuckle*, which is well known in the art, on each cable (5,5) of the modified Gregory's elevator system [536,927] as taught by Johnson (3,845,842) to adjust the length of each cable.

Art Unit: 3652

Re claims 8 and 14, the modified Gregory's elevator system [536,927] shows a guide bar (7) (see Fig. 3) adjacent to and parallel with the cylindrical shaft and it appears that the guide bar would be capable of substantially guiding the two cables (5,5) on and off the sheaves (9,9) in a preferred directions. Applicant describes the limitation "*a cable guide bar 32 that directs the cables 3 onto and off the two sheaves 11*" (see page 11, last two lines of Paper No. 6). However, the applicant does not clearly disclose as to how the "cable bar directs the cables on and off the two sheaves." Similarly, the modified Gregory's elevator system [536,927] substantially shows a guide bar (7) (see Fig. 3) adjacent to and parallel with the cylindrical shaft and it appears that the guide bar would be capable of substantially guiding the two cables (5,5) on and off the sheaves (9,9) in a preferred direction for emergency guidance.

Re claims 9 and 15, the modified Gregory's elevator system [536,927] shows a cage or container being made of one-piece construction and the functional limitation or the intended use (i.e. *adapted to contain a fluid spill*) is not patentably significant.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3652

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (703) 305-1524. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (703) 308-3248. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-1113.

ptc

PTC
October 6, 2003


EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600